IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 701 of 2003.

Decided on: 28.05 2007.

Kamla Wati.

… … … Petitioner.

Versus

Union of India and others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the petitioner:	**Ms. Vandana Kuthiala, Advocate.**
For Respondent No.1:	**Ms. Shilpa Sood, Central Government Counsel.**
For Respondent No.2	**Mr. M.S. Chandel, Advocate General with Ms. Meenakshi Sharma, Deputy Advocate General.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that petitioner's husband was a subject of the Ruler of the State of Bilaspur. The Indian National Congress was fighting for independence of the country from the British rule and similar movements for the freedom of the country and for

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Whether reporters of local papers may be allowed to see the judgment? No.

the merger of the princely States with the Indian Union were going on in almost all the States including Bilaspur State. The Praja Mandal Movement was being run by various Praja Mandals which were affiliated to “All India States People Conference” a Central Organization of which late Pandit Jawahar Lal Nehru was the Chairman. The petitioner’s husband also participated in the Praja Mandal Movement of Bilaspur State and earned the displeasure and anger of Raja Bilaspur. He also took part in Satyagrah in September, 1946 and the Raja of Bilaspur had issued oral order for his externment. He remained externed from 1946 to October, 1948.

The Government of India had promulgated a Scheme known as “Freedom Fighters’ Pension Scheme’. 1972, which was further liberalized and re-named “Swatantarta Sainani Samman Pension Scheme” in 1980. It is averred in the petition that the case of the petitioner’s husband for the grant of pension as freedom fighter was fully covered under clause (c) of the Scheme. He applied to the respondent No.1 for freedom fighter’s pension on 19.8.1980 under the Swatantarta Sainani Pension Scheme. He had forwarded all the certificates as required under the Scheme. Respondent No.2 had also requested the respondent No.1 to take an early decision in the matter. His case was rejected by respondent No.1 on 15.12.1981 vide Annexure P-D. The respondent No.2 had also framed a Scheme known as ‘H.P. Swatantarta Sainani Samman

Yojna" for grant of benefits to freedom fighters. Petitioner's husband also applied under this Scheme and he was declared a freedom fighter on 12.7.1988 and was granted a sum of Rs.5170/- as arrears of pension under the Scheme from 22.4.1985 to 30.6.1988. The petitioner's husband after being declared freedom fighter by the State Government submitted application to respondent No.1 through respondent No.2 on 14.9.1995. Petitioner's husband expired on 19.11.1999. When no decision was taken by respondent No.1 on the application submitted by the petitioner on 14.9.1995, the petitioner applied to respondent No.1 on the prescribed form on 2.9.2001 for granting benefits under the Swatantarta Sainani Samman Pension Scheme, 1980. The petitioner was granted pension vide Ministry letter dated 1.1.2004 with effect from 20.8.2001 vide Annexure R-2.

Ms. Vandana Kuthiala had argued that the pension was to be released to the petitioner w.e.f. 19.8.1980, the date of the initial submission of application and not with effect from 20.8.2001. Ms. Shilpa Sood had supported the issuance of letter dated 1st January, 2004 on the basis of which the petitioner has been held entitled to the pension w.e.f. 20.8.2001.

I have heard the parties and also gone through the record carefully.

The sole question requiring consideration is whether the petitioner is entitled to the pension with effect from 19.8.1980,

the date on which the petitioner's husband had submitted the application or with effect from 20.8.2001 as granted by respondent No.1.

The Scheme has been promulgated during the twenty fifth anniversary (Silver Jubilee Year) of independence for the grant of pension to the freedom fighters and their families from central revenues. The Scheme had commenced from 15th August, 1972 and provided for the granting pension to living freedom fighters and their families if they were no more alive and to the families of martyrs. With effect from 1.8.1980 the benefit of pension Scheme has been extended to all the freedom fighters as a token of Samman to them.

The petitioner's husband had submitted application on 19.8.1980 for grant of pension under the Swatantarta Sainani Samman Pension Scheme being a freedom fighter. His case was rejected on 15,12,1981. The petitioner's husband was recognized as a freedom fighter by the State of Himachal Pradesh vide letter dated 12.7.1988. The petitioner's husband had submitted application after being declared freedom fighter by the State on 14.9.1995 to the respondent No.1, which though required to be decided expeditiously, was kept pending by the respondent No.1. The petitioner submitted application in the prescribed form for grant of benefits under the Swatantarta Sainani Samman Pension Scheme, 1980 on 2.9.2001. The respondent No.1 had granted the pension to the petitioner with effect from 20.8.2001 vide letter dated 1st January, 2004. The

Scheme has been promulgated to honour the freedom fighters and their family members. The respondent No.1 had not taken into consideration the various salient features of the Scheme while rejecting his claim on 15.12.1981. On the same material produced by the petitioner's husband, the State has recognized him as a freedom fighter vide communication dated 12.7.1988. If the petitioner's husband had been recognized as a freedom fighter by the State that means that the decision taken by respondent No.1 on 15.12.1981 not recognizing him as a freedom fighter was wrong. The petitioner has been granted the pension on the basis of the same documents/certificates which were filed at the time of submissions of the application by her husband on 19.8.1980. In these circumstances, it is evident that the case of the petitioner's husband had wrongly been turned down on 15.12.1981 though he was entitled to get the pension w.e.f. 19.8.1980. The fact that the petitioner's husband has been declared as freedom fighter by the State in the year 19888 and he has been granted pension w.e.f. 20.8.2001 on the basis of the same material, there is no reason why the petitioner should not be held entitled to pension w.e.f. 19.8.1980. The decision of respondent No.1 of granting the pension with effect from 20.8.2001 instead of the first application submitted by the husband of petitioner w.e.f. 19.8.1980 is arbitrary and unreasonable.

Accordingly, in view of the above mentioned discussion and taking into consideration the letter and spirit of the Scheme,

the petitioner is entitled to get pension w.e.f. 19.8.1980. Consequently, this petition is allowed. The petitioner is held entitled to the pension w.e.f. 19.8.1980 with arrears. The respondent No.1 is directed to release the arrears within a period of eight weeks from today.

There shall be no order as to costs.

(Rajiv Sharma)
Judge

May 28, 2007*(sck).*